

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH GASKINS,

Plaintiff,

v.

MULE CREEK STATE PRISON,

Defendant.

Case No. 2:22-cv-00459-JDP (PC)

ORDER THAT THE CLERK OF COURT
ASSIGN A DISTRICT JUDGE TO THIS
ACTION

FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF'S SECOND AMENDED
COMPLAINT BE DISMISSED

ECF No. 20

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

As in his prior two complaints, plaintiff alleges that he was transferred between prisons without his personal property. ECF No. 20 at 3. As explained in my prior screening orders, Mule Creek State Prison is not a proper defendant, and this is not cognizable claim. Accordingly, I recommend that this action be dismissed.

Screening and Pleading Requirements

A federal court must screen a prisoner's complaint that seeks relief against a governmental entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, that fails to state a

1 claim upon which relief may be granted, or that seeks monetary relief from a defendant who is
 2 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

3 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
 4 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
 5 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
 6 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
 7 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
 8 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
 9 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
 10 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
 11 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
 12 n.2 (9th Cir. 2006) (en banc) (citations omitted).

13 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
 14 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
 15 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 16 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
 17 However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements
 18 of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
 19 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

20 Analysis

21 Plaintiff alleges that he was transferred from Mule Creek State Prison to Coalinga State
 22 Hospital without one box of his personal property. ECF No. 20 at 3, 6. As indicated in my prior
 23 orders, a claim under § 1983 for deprivation of property does not arise “unless and until the State
 24 fails to provide” an adequate process to remedy the claimed deprivation of property, *see*
 25 *Zinerman v. Burch*, 494 U.S. 113, 125-26 (1990), and California law provides for such process,
 26 *see Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Additionally, plaintiff continues to
 27 name Mule Creek State Prison as the only defendant; I have instructed him previously that Mule
 28 Creek is not a viable defendant in a § 1983 action. *See Allison v. California Adult Auth.*, 419 F.2d

1 822, 823 (9th Cir. 1969).

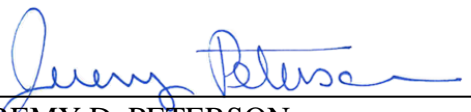
2 Accordingly, it is ORDERED that the Clerk of Court is directed to assign a district judge
3 to this action.

4 Further, it is RECOMMENDED that this action be dismissed without leave to amend.

5 I submit these findings and recommendations to the district judge under 28 U.S.C.
6 § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,
7 Eastern District of California. Within 14 days of the service of the findings and
8 recommendations, any party may file written objections to the findings and recommendations
9 with the court and serve a copy on all parties. That document should be captioned “Objections to
10 Magistrate Judge’s Findings and Recommendations.” The district judge will review the findings
11 and recommendations under 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the
12 specified time may result in the waiver of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d
13 834, 839 (9th Cir. 2014).

14
15 IT IS SO ORDERED.

16 Dated: December 16, 2022

17 
18 JEREMY D. PETERSON
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28